IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2964 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DASHRATHJI SHIVAJI THAKOR

Versus

STATE OF GUAJRAT

Appearance:

1. Special Civil Application No. 2964 of 2003

MR HR PRAJAPATI for Petitioner No. 1

MS NANDINI JOSHI AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 18/10/2004

ORAL JUDGEMENT

1. The petitioner herein has preferred this petition in order to quash and set aside the order dated

27/02/2001 passed by respondent no.3, cancelling the retail license of the petitioner, which was confirmed by respondent no.2 vide order dated 15/10/2001 and then by respondent no.1 vide order dated 27/06/2002.

2. The petitioner was holding a retail license for running a fair price shop. Inspection was conducted at the shop of the petitioner by the Supply Inspector between 28/11/2000 to 03/12/2000. Subsequently, the petitioner was issued with notice to show cause as to why the License / Authorization of the petitioner to run the said shop should not be cancelled and action for breach of the provisions of other laws should not be initiated against him. A copy of the said show cause notice is placed at Annexure-A to the petition. The petitioner replied to the said show cause notice vide reply dated 23/01/2001.

3. By order dated 27/02/2001, respondent no.3 cancelled the license / authorization of the petitioner and directed him to forfeit the license. A copy of the said order is placed at Annexure-D to the petition. Feeling aggrieved by the said order of respondent no.3, the petitioner preferred appeal before respondent no.2. The said appeal of the petitioner was also dismissed by order dated 15/10/2001, at Annexure-E to the petition.

4. The petitioner preferred revision before respondent no.1. By order dated 27/06/2002, the revision of the petitioner was also rejected, at Annexure-G to the petition. Hence, this petition.

5. Mr.H R Prajapati learned advocate for the petitioner has contended that the State Government had issued a Circular, whereby, it was made mandatory on the part of the licensing authority to supply all the necessary documents to a license holder alongwith the show cause notice. He has further contended that while issuing the show cause notice dated 15/01/2001, at Annexure-A to the petition, the petitioner was not supplied with all the documents, on the basis of which the said notice was issued.

6. Mr.Prajapati has further contended that since the petitioner was under detention, he was not in a position to raise all the contentions before the authority.

7. I have heard learned counsel for the parties and perused the relevant documents on record. While issuing the show cause notice dated 15/01/2001, the licensing authority has not supplied all the necessary documents

which were relied on by it. Moreover, the petitioner was not issued with show cause notice, at Annexure-C to the petition, before the license was cancelled, which was mandatory on the part of the licensing authority, as provided under the Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order, 1981. Therefore, the order of the respondent authorities is required to be quashed and set aside.

8. In the result, the petition is partly allowed. The orders of the respondent authorities dated 27/02/2001, 15/10/2001 and 27/06/2002 are quashed and set aside. The petitioner is directed to approach respondent no.3, District Supply Officer, within a period of fifteen days from the date of receipt of writ of this order and respondent no.3 shall hear the matter afresh, without being influenced by the fact that this Court has quashed the orders of all the three authorities. The documents which were sought to be relied upon by the authorities shall be supplied to the petitioner and after hearing the petitioner, the District Supply Officer shall pass appropriate orders and till then, the order of cancellation of the license shall remain in abeyance.

9. However, it is made clear that the quashing of the aforesaid three orders will not restore the position of the petitioner and it will be subject to the decision of the District Supply Officer in the matter. If any document/s is/are not supplied by the authority, then the petitioner will be at liberty to specifically demand the same from the authority, so that it may not be said at a later stage that the documents were not supplied to the petitioner.

10. With the above directions, the petition is partly allowed. Rule is made absolute to the above extent.

(K. S. Jhaveri, J.)

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